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7
8 **UNITED STATES DISTRICT COURT**
9 **DISTRICT OF NEVADA**

10 RENE A. FEELEY AND BRIAN FEELEY,
individually and on behalf of all those similarly
11 situated,

12 Plaintiffs,

13 v.

14 JODY LINDELL, JOHN MCLAUGHLIN,
PAUL SANDMAN, HAROLD SELICK, PH.D.,
15 DAVID W. GRYSKA,

16 Defendants,

17 -and-

18 PDL BIOPHARMA, INC.

19 Nominal Defendant.

Case No. 2:14-CV-01738-APG-GWF

**MOTION FOR APPROVAL OF
MANNER OF PROVIDING NOTICE OF
VOLUNTARY DISMISSAL AND
ORDER**

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21 Plaintiffs respectfully submit this proposal with respect to the form of notice
22 of the voluntary dismissal of this derivative lawsuit. The Parties have agreed to
23 voluntarily dismiss this lawsuit without prejudice and have simultaneously
24 submitted for the Court's review and approval a stipulation of voluntary dismissal
25 without prejudice. Pursuant to Rule 23.1(c), Plaintiffs propose that notice of the
26 voluntary dismissal without prejudice be in the form of a press release issued by
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1 PDL Biopharma Inc. (“PDL” or the “Company”) that would be filed with the U.S.
2 Securities and Exchange Commission (“S.E.C.”) on Form 8-K and posted on PDL’s
3 website. Defendants agree that this notice is sufficient and agree to make and file
4 the press release.
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6 **I. ARGUMENT**

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8 Rule 23.1(c) of the Federal Rules of Civil Procedure requires that notice be
9 given to shareholders in the manner that the Court orders when a derivative action is
10 settled or voluntarily dismissed. The Parties have today filed a Stipulation and
11 [Proposed] Order of Voluntary Dismissal Without Prejudice (which recites the
12 background and reasons for the dismissal), and they respectfully request that the
13 Court “so order” that stipulation of voluntary dismissal. Plaintiffs propose to notify
14 shareholders of this dismissal by way of the Company issuing a press release
15 informing shareholders that this action has been voluntarily dismissed without
16 prejudice. PDL would file the press release with the S.E.C. on Form 8-K, which is a
17 “current report” filed with the SEC to announce events that a company considers to
18 be of importance to security holders. The Form 8-K would be publicly available at
19 no charge on the S.E.C.’s web site, <http://www.sec.gov/edgar.shtml>. PDL would
20 also post the Form 8-K and press release on its own website, <http://pdl.com/>,
21 notifying shareholders of the dismissal. Plaintiffs request that the Court approve
22 this manner of providing notice of the dismissal.
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28 The Parties agree that the method of the proposed notice is sufficient to notify

1 the shareholders of the dismissal. The notice will be available to all PDL
2 shareholders on the Company's website (and would additionally be available on the
3 S.E.C.'s EDGAR web site). Publishing notice regarding a shareholder action on the
4 Company's website is appropriate because it is where shareholders are most likely
5 to go to find company information.
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8 Because the dismissal is without prejudice, the dismissal does not operate to
9 deprive the Company or its shareholders of the right or ability to address the claims
10 in Plaintiffs' Complaint (unlike a proposed settlement or dismissal with prejudice).
11 If another shareholder decides to pursue a claim at a later date, their rights have not
12 been prejudiced by the dismissal. Notice in a press release filed on Form 8-K would
13 be sufficient to inform PDL shareholders of the status of the claims. Including the
14 notice in a press release that is filed with the SEC and posted on the Company's web
15 page is a cost-effective way of reaching the largest number of shareholders. Any
16 other more onerous and costly form of notice would be unnecessary to address any
17 limited residual interest in notice here.
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21 II. CONCLUSION

22 Plaintiffs request the Court order that notice of the voluntary dismissal
23 without prejudice be provided in a press release to be issued by the Company, filed
24 with the S.E.C. on Form 8-K, and published on the Company's website. The
25 Company would issue and file the press release within ten (10) business days of the
26 Court "so ordering" the stipulation of dismissal and approving this proposed manner
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1 of providing the notice.

2 Dated: February 13, 2015

3 KEMP, JONES & COULTHARD, LLP

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26 *****

27 IT IS SO ORDERED.

28 Dated: February 17, 2015.



Hon. Andrew P. Gordon
United States District Judge